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No. 08-201

Supreme Court, U.S.
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In The
Supreme Court of the United States

ARCH LIGHTING GROUP, INC.,
Petitioner,

v.

GENLYTE THOMAS GROUP LLC,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE QUESTION PRESENTED

I. Whether Petitioner provides a compelling reason for review when the Petition merely raises alleged errors by the Federal Circuit, and particularly when the Federal Circuit's decision was based on the Petitioner's own actions or inactions.

RULE 29.6 STATEMENT

Respondent Genlyte Thomas Group LLC identifies the following parent corporations and/or publicly held corporations that own 10% or more of the stock of Respondent:

The Genlyte Group Incorporated, a wholly owned subsidiary of Philips Holding USA, Inc., a wholly owned subsidiary of Koninklijke Philips Electronics N.V.

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COUNTERSTATEMENT OF THE CASE

Respondent Genlyte Thomas Group LLC filed a patent infringement action against Petitioner Arch Lighting Group, Inc. in the United Stated District Court for the District of Massachusetts. The District Court entered judgment in favor of Respondent after the jury returned a verdict finding three of the Petitioner's accused products infringed the patent-in-suit and awarding Respondent damages (Petition ["Pet."], Appendix ["App."] E). Petitioner moved the District Court for Judgment as a Matter of Law ("JMOL") and for a New Trial. The District Court denied Petitioner's post-trial motions (Pet., App. C). Thereafter, Petitioner appealed to the United States Court of Appeals for the Federal Circuit, which affirmed the judgment in a non-precedential opinion (Pet., App. A).

The questions raised on appeal by Petitioner were whether the District Court's denial of a JMOL and a New Trial should be reversed because: (1) the verdict of infringement was not supported by substantial evidence; and (2) the Jury was improperly charged and/or the verdict was against the clear weight of the evidence (Pet., App. A, pp. 3a and 7a-8a). The Federal Circuit affirmed the District Court's judgment, holding that substantial evidence supported the Jury's verdict, and also ruling that [a] Petitioner conceded that its accused products contained the "means for ceiling-mounting" claim limitation; [b] Petitioner's argument that its accused products did not contain both the "first" and "second" light fixture limitations was waived because the District Court adopted and applied Petitioner's claim construction and jury instructions on

this point, and that Petitioner made further concessions regarding these limitations; and [c] Petitioner's own claim construction, which was adopted by the District Court, did not differentiate between "first" and "second" light fixtures (Pet., App. A, pp. 4a-7a).

With respect to the second question on appeal, the Federal Circuit held that [a] Petitioner failed to raise or preserve the issue of claim construction with respect to the "means for ceiling-mounting" claim element; [b] Petitioner nonetheless conceded that its accused products contained that claim element; and [c] substantial evidence supported the jury's verdict of infringement regarding this claim element in any event (Pet., App. A, pp. 7a-8a).

REASONS FOR DENYING THE WRIT

The Petition for Writ of Certiorari should be denied because it does not present a question within this Court's certiorari jurisdiction. Under Supreme Court Rule 10, a petition will only be granted for "compelling reasons." As shown above, the Federal Circuit did not enter a decision in conflict with another court of appeal or a state court of last resort, nor did the Federal Circuit base its Opinion on a question of federal law that had not been settled by this Court. Moreover, the Federal Circuit's Opinion does not conflict with any decision of this Court.

An analysis of the Petition reveals that Petitioner seeks to have this Court correct perceived "errors" by the Federal Circuit. However, this Court is not an error-correcting court. Rather, as articulated in Rule

10, this Court is a court of national policy, and the Petition fails to present such an issue. Further, certiorari does not exist to rescue a party from the consequences of its own trial tactics. As shown below, the alleged errors asserted by Petitioner were brought about by its own actions or inactions.

I. The Federal Circuit's Affirmance Of The District Court's Judgment of Infringement Under The Doctrine Of Equivalents Does Not Present A "Compelling Reason" Warranting Review By This Court.

The Federal Circuit's decision upholding the District Court's denial of JMOL as to infringement under the doctrine of equivalents does not conflict with that doctrine. The Federal Circuit held that under the claim construction *proposed by Petitioner*, and adopted by the District Court, the two light fixtures were not required to point in different directions as Petitioner argued on appeal (for the first time) as error (Pet., App. A, pp. 5a-7a). Moreover, the Federal Circuit held that, in light of the District Court's claim construction, the jury's verdict of infringement under the doctrine of equivalents did not "eliminate a claim limitation" (Pet., App. A, p. 7a). Here also, the Federal Circuit's opinion makes clear that Petitioner waived this issue in the presentation of its own claim construction which was adopted by the District Court. The Federal Circuit noted that Petitioner failed to object to the trial court's instruction, or press for a different instruction, and thereby Petitioner "specifically disclaimed any argument that the jury instructions with regard to those limitations were incorrect" (Pet., App. A, pp. 5a-6a).

Consequently, Petitioner fails to provide a compelling reason for this Court's review.

II. The Federal Circuit's Decision Does Not Conflict With The Patent Statutes Or Any Decision Of This Court And Therefore Does Not Present A "Compelling Reason" Warranting Review By This Court.

The Federal Circuit's holding that the District Court's jury instructions were not erroneous does not conflict with the patent statute or any decision of this Court. Petitioner urges that because the Federal Circuit did not find error in the District Court's jury instructions with respect to the "means for ceiling-mounting" claim limitation (and 35 U.S.C § 112, ¶ 6) that the Federal Circuit thereby usurped the role of the jury (Pet., pp. 11-12). Petitioner ignores the actual language in the Opinion of the Federal Circuit. Contrary to Petitioner's statements, the Federal Circuit held that Petitioner "did not raise the issue of claim construction with respect to the 'means for ceiling-mounting' limitation . . . and [Petitioner] conceded that the 'means for ceiling-mounting' limitation was satisfied" (Pet., App. A, p. 7a). Based on these facts, the Federal Circuit held that the District Court did not err by not giving Petitioner's proposed "means-plus-function" jury instruction (Pet., App. A, pp. 7a-8a).

Whether Petitioner's actions with regards to the "means for ceiling-mounting" limitation were a result of simple oversight or a deliberate trial strategy that backfired, Petitioner nonetheless cannot now seek this Court's intercession to relieve Petitioner of the

consequences of its own actions or inactions. Consequently, Petitioner again fails to provide a compelling reason to warrant review by this Court.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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